

and commodities to the extent practicable, unless a landowner elects to utilize his or her own personnel and equipment. The landowner may select a method of reimbursement from the alternatives adopted by the Chief Financial Officer.

History.—s. 7, ch. 84-330; s. 637, ch. 95-148; s. 402, ch. 2003-261.

378.038 Rulemaking.— The department shall adopt reasonable rules which recognize the cost reimbursement limitations of s. 378.037(1)(b) to implement the provisions of this act, including, but not limited to, size requirements for areas which are the subject of a reclamation program application, an appropriate inflationary index for construction, time limits for completing the approved reclamation, minimum standards and criteria for reclamation, and procedures to ensure that the trust fund is managed in accordance with good accounting principles and the provisions of this chapter.

History.—s. 8, ch. 84-330.

PART II

PHOSPHATE LAND RECLAMATION

378.201 Short title.

378.202 Legislative intent.

378.203 Definitions.

378.204 Applicability.

378.205 Administration; powers and duties of the department; agency review responsibility.

378.207 Reclamation criteria and standards.

378.208 Financial responsibility.

378.209 Timing of reclamation.

378.211 Violations; damages; penalties.

378.212 Variances.

378.201 Short title.— This part may be cited as the “Phosphate Land Reclamation Act.”

History.—s. 1, ch. 86-294.

378.202 Legislative intent.— The Legislature finds that:

(1) Florida is endowed with varied natural resources that provide recreational, environmental, and economic benefit to the people of this state. The extraction of phosphate is important to the continued economic well-being of the state and to the needs of society. While it is not possible to extract minerals without disturbing the surface areas and producing waste materials, mining is a temporary land use. Therefore, it is the intent of the Legislature that mined lands be reclaimed to a beneficial use in a timely manner and in a manner which recognizes the diversity among mines, mining operations, and types of lands which are mined.

(2) The rules developed by the department for the regulation of mandatory land reclamation should be consistent with the goals of the state to simplify and coordinate regulation. The department shall enter into memoranda of understanding to eliminate duplication, to simplify the processing of reclamation applications, and to maximize the effectiveness of the regulatory process.

History.—s. 1, ch. 86-294.

378.203 Definitions.— As used in this part, the term:

(1) “Acres mined” means all acres on which mining operations have resulted in extraction of phosphate rock.

(2) “Annual report” means a detailed report, including maps and aerial photographs, submitted for each mine, which describes and delineates mining operations and reclamation or restoration activities undertaken in the previous calendar year.

(3) “Conceptual reclamation plan” means a graphic and written description of general activities to be undertaken across the whole mine to comply with the reclamation standards and criteria contained in this part.

(4) “Department” means the Department of Environmental Protection.

(5) "Mine" means an area of land upon which mining operations have been conducted, are being conducted, or are planned to be conducted, as the term is commonly used in the trade.

(6) "Mining operations" means those physical activities, other than prospecting and site preparation, which are necessary for extraction, waste disposal, storage, or dam maintenance prior to abandonment.

(7) "New mine," as used in s. 378.209, means a mine for which the operator first became obligated to pay a severance tax for the extraction of minerals therefrom after July 1, 1975.

(8) "Operator" means the person engaged, or seeking to be engaged, in the severance of solid minerals, or any other person who is obligated to reclaim mined lands pursuant to s. 211.32(1). For purposes of s. 378.208 relating to financial responsibility, the term "operator" includes a parent, its subsidiary, or division.

(9) "Reclamation" means the reshaping of lands in a manner that meets the reclamation criteria and standards contained in this part.

(10) "Restoration" means the recontouring and revegetation of lands in a manner, consistent with the criteria and standards established under this part, which will maintain or improve the water quality and function of the biological systems present at the site prior to mining. In requiring restoration of an area, the department must recognize technological limitations and economic considerations. For example, restoration must be considered accomplished when immature trees are used; mature trees are not required to be replanted in areas where mature trees were removed to allow mining.

(11) "Revegetation" means, in reclaimed areas, a cover of vegetation consistent with the criteria and standards established pursuant to this part and consistent with the land form created and the future land uses. In restored areas, it means a cover of vegetation that is designed to return the restored area to the condition in existence prior to mining.

(12) "Secretary" means the Secretary of Environmental Protection.

History.—s. 1, ch. 86-294; ss. 319, 505, ch. 94-356.

378.204 Applicability.— The provisions of this part apply to land subject to the mandatory reclamation obligation for the severance of solid mineral phosphate rock set forth in s. 211.32(1) and to those lands which are initially used after July 1, 1984, as a clay settling area or a dam for use with a clay settling area. Such provisions do not apply to acres disturbed by the severance of phosphate rock prior to July 1, 1975, and, therefore, do not affect the determination of whether lands disturbed by the severance of phosphate rock are subject to the mandatory reclamation obligation. This part shall not be construed as giving the department permitting authority over mining operations.

History.—s. 1, ch. 86-294.

378.205 Administration; powers and duties of the department; agency review responsibility.—

(1) The department shall administer the provisions of this part and shall have the following powers and duties:

(a) To issue conceptual reclamation plan approvals requiring an operator to take such actions as are necessary to comply with this part.

(b) After proper notice, and upon the presentation of appropriate credentials and other documents as may be required by law, to enter on and inspect at reasonable times and intervals for the purpose of assuring compliance with ss. 378.202-378.212, any lands that are subject to ss. 378.202-378.212.

(c) To prescribe the forms for conceptual reclamation plan applications and annual reports.

(d) To adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this part.

(2) The department will be the lead agency responsible for phosphate mine reclamation in accordance with the provisions of this part and with the rules adopted by the department. The department may seek comments from appropriate federal, state, regional, or local governmental agencies to assist it in establishing rules, reviewing reclamation applications, or otherwise implementing the provisions of this part. The department's consideration of comments on proposed conceptual reclamation plans and reclamation programs shall be limited to matters within the jurisdiction of the commenting agency.

(3) Administrative challenges to proposed state agency actions regarding phosphate mines and reclamation pursuant to this chapter or part IV of chapter 373 are subject to the summary hearing provisions of s. 120.574, except that the summary proceeding must be conducted within 90 days after a party files a motion for summary hearing,

regardless of whether the parties agree to the summary proceeding and the administrative law judge's decision is a recommended order and not a final order.

History.—s. 1, ch. 86-294; ss. 320, 506, ch. 94-356; s. 90, ch. 98-200; s. 5, ch. 2008-150.

378.207 Reclamation criteria and standards.—

(1) The department, by rule, shall adopt statewide criteria and standards for reclamation. Such rules shall recognize that surface mining takes place in diverse areas where the geologic, topographic, and edaphic conditions are different, and that reclamation operations and the specifications therefor may vary accordingly. The rules, recognizing technological limitations and economic considerations, shall require the return of the natural function of wetlands or a particular habitat or condition to that in existence prior to mining.

(2) The criteria and standards shall govern performance of reclamation and not the methodology to be used to achieve compliance with the reclamation obligation or the manner in which mining and associated activities are conducted.

History.—s. 1, ch. 86-294.

378.208 Financial responsibility.—

(1) An operator of a mine shall provide appropriate financial assurance to the state that the reclamation of lands subject to the mandatory reclamation obligation will be completed in a timely manner. Compliance with the rate of reclamation established in s. 378.209 is deemed to be appropriate financial assurance.

(2) Operators who are not in compliance with the rate of reclamation established in s. 378.209 must post one or more of the following forms of security:

(a) A lien in favor of the state on unmined lands or on reclaimed and released real property owned in fee simple absolute by the operator. No formal appraisal of the property shall be required; however, the unencumbered value of the property shall be comparable to the cost of reclamation established pursuant to subsection (3).

(b) A surety bond in either a fixed amount, adjusted annually for inflation, or in an amount to be determined based upon projected reclamation costs at the time the security is purchased.

(c) A letter of credit in either a fixed amount, adjusted annually for inflation, or in an amount to be determined based upon projected reclamation costs at the time the security is purchased.

(d) A donation of land acceptable to the state whereby every acre donated would relieve the company of the obligation to bond or otherwise provide security for the reclamation of acres mined, based on a ratio of 1 acre donated to cover the financial responsibility for 10 or more acres of mined lands. This donation would not relieve the operator of the obligation to reclaim.

(e) A cash deposit or trust fund payable to the state in a fixed amount, adjusted annually for inflation, or in an amount to be determined based upon projected reclamation costs at the time the cash deposit or trust fund is established.

(f) Any combination of the financial assurance methods allowed in paragraphs (a)-(e).

The form of security posted shall be at the option of the operator and shall cover the number of acres for which the operator is delinquent in reclaiming in the required time period as well as the number of acres that the operator must reclaim in the current 5-year period. The security, other than the donation of land, shall be released upon completion of reclamation of delinquent acres.

(3) The amount of financial responsibility shall be established by the secretary and shall not exceed \$4,000 per acre for each reclamation program, adjusted annually by the appropriate inflationary index for construction. The Office of Insurance Regulation of the Financial Services Commission shall be available to assist the secretary in making this determination. In establishing the amount of financial responsibility, the secretary shall consider:

- (a) The amount and type of reclamation involved.
- (b) The probable cost of proper reclamation.
- (c) Inflation rates.
- (d) Changes in mining operations.

(4) The department shall adopt rules which establish:

- (a) Procedures to establish, modify, or release the security posted.
- (b) Procedures and criteria for modifications to or exemptions from the financial responsibility requirements when such modifications will not conflict with the purposes of this part, including consideration of such factors as the size or nature of the operation, demonstrated reclamation performance, and compliance with conceptual reclamation plans or reclamation programs approved prior to October 1, 1986.

(5) The department, by rule, may require each operator to submit a copy of its most recent annual financial statements. An operator's submittal of its annual report on Form 10-K, as filed with the Securities and Exchange Commission, shall constitute compliance with this requirement. The financial statement submitted pursuant to rules authorized by this subsection, except for a financial statement that is a public record in the custody of another governmental agency, shall be confidential and exempt from the provisions of s. 119.07(1), and the department shall ensure the confidentiality of such statements.

History.—s. 1, ch. 86-294; s. 13, ch. 89-117; s. 115, ch. 90-360; s. 322, ch. 94-356; s. 182, ch. 96-406; s. 54, ch. 2000-158; s. 10, ch. 2000-211; s. 403, ch. 2003-261.

378.209 Timing of reclamation.—

(1) Reclamation should be completed within 2 years after the completion of mining operations, exclusive of a growing season required to ensure establishment of vegetation. For purposes of this section, completion of reclamation occurs when initial revegetation is completed and not at the time of final release of the reclamation area. For the purpose of s. 378.208, the schedule for complete reclamation is as prescribed in paragraphs (a)-(e).

(a) For the period July 1, 1975, to December 31, 1980, for existing mines or the first 5-year period of mining for new mines, reclamation may not be required, and any reclamation that is completed must be credited forward.

(b) For the period January 1, 1981, to December 31, 1985, for existing mines or the second 5-year period of mining for new mines, reclamation of acres mined must be completed at the rate of an acreage equivalent of 15 percent of the acres mined during the period July 1, 1975, to December 31, 1980, or the immediately preceding 5-year period, as appropriate. Reclamation in excess of the required percentage must be credited forward.

(c) For the period January 1, 1986, to December 31, 1990, for existing mines or the third 5-year period of mining for new mines, reclamation of acres mined must be completed at the rate of an acreage equivalent of 60 percent of the acres mined during the period January 1, 1981, to December 31, 1985, or the immediately preceding 5-year period, as appropriate. Reclamation in excess of the required percentage must be credited forward.

(d) For the period January 1, 1991, to December 31, 1995, for existing mines or the fourth 5-year period of mining for new mines, reclamation of acres mined must be completed at the rate of an acreage equivalent of 75 percent of the acres mined during the period January 1, 1986, to December 31, 1990, or the immediately preceding 5-year period, as appropriate. Reclamation in excess of the required percentage must be credited forward.

(e) For the period January 1, 1996, to December 31, 2000, for existing mines or the fifth 5-year period of mining for new mines, and each 5-year period thereafter, reclamation of acres mined must be completed at the rate of an acreage equivalent of 100 percent of acres mined during the immediately preceding 5-year period. Reclamation in excess of the required percentage must be credited forward.

(2) The rate of mining during any 5-year period is to be determined solely by the operator and not the state.

(3) The time periods and reclamation rates specified in this section may be modified or waived for experimental reclamation programs, to take into account the effect of temporary shutdown of mining operations or other physical restraints, for unreasonable delays in the processing of reclamation applications by the department, or to relieve or prevent extreme economic hardship on the operator.

(4) When the beneficial use of a constructed clay settling area has been extended, the rate of reclamation requirements in paragraphs (1)(a)-(e) and the requirements of s. 378.208 apply to such settling area when the beneficial use of such settling area is completed.

History.—s. 1, ch. 86-294; s. 507, ch. 94-356; s. 3, ch. 2016-130.

378.211 Violations; damages; penalties.—

(1) The department may institute a civil action in a court of competent jurisdiction for injunctive or other appropriate relief to enforce compliance with this part, for the assessment of damages, or for both injunctive relief and damages.

(2) The department may institute a civil action in a court of competent jurisdiction to impose and recover a civil penalty for violation of this part or of any rule adopted or order issued pursuant to this part. The penalty shall not exceed the following amounts, and the court shall consider evidence in mitigation:

(a) For violations of a minor or technical nature, \$100 per violation.

(b) For major violations by an operator on which a penalty has not been imposed under this paragraph during the previous 5 years, \$1,000 per violation.

(c) For major violations not covered by paragraph (b), \$5,000 per violation.

Subject to the provisions of subsection (4), each day or any portion thereof in which the violation continues shall constitute a separate violation.

(3) The remedies provided for in subsections (1) and (2) shall not apply to the failure to comply with the requirements of s. 378.209. However, if an operator has failed to comply with the requirements of s. 378.209 and the department determines that the operator is unable or unlikely to come into compliance with those requirements within a reasonable time, then the department may institute a civil action in a court of competent jurisdiction to recover against the security provided pursuant to s. 378.208.

(4) As a condition precedent to the institution of any action authorized by subsection (1), subsection (2), or subsection (3), the department shall issue a written notice of violation to the operator setting forth in detail the alleged violation and specifying a reasonable time, not to exceed 90 days, in which to initiate corrective action. If the operator disputes the matters contained in the notice of violation, the operator may request a hearing pursuant to ss. 120.569 and 120.57. If a hearing is requested, the time for initiating corrective action shall not begin to run until a final order is entered. The civil penalties provided in subsection (2) shall not begin to accrue until the expiration of the time for initiating corrective action provided in the notice of violation issued by the department. Upon the expiration of the period provided in the notice, the department, in its discretion, may institute the action provided for under subsection (1), subsection (2), or subsection (3), if the violation specified in the notice of violation has not been corrected.

(5) Penalties collected pursuant to subsection (2) shall be deposited to the credit of the Phosphate Research Trust Fund.

History.—s. 1, ch. 86-294; s. 110, ch. 96-410.

378.212 Variances.—

(1) Upon application, the secretary may grant a variance from the provisions of this part or the rules adopted pursuant thereto. Variances and renewals thereof may be granted for any one of the following reasons:

(a) There is no practicable means known or available to comply with the provisions of this part or the rules adopted pursuant thereto.

(b) Compliance with a particular requirement or requirements from which a variance is sought will necessitate the taking of measures which must be spread over a considerable period of time. A variance granted for this reason shall prescribe a timetable for the taking of the measures required.

(c) To relieve or prevent hardship, including economic hardship, of a kind other than those provided for in paragraphs (a) and (b).

(d) To accommodate specific phosphate mining, processing or chemical plant uses that otherwise would be inconsistent with the requirements of this part.

(e) To provide for an experimental technique that would advance the knowledge of reclamation and restoration methods.

(f) To accommodate projects, including those proposing offsite mitigation, that provide a significant regional benefit for wildlife and the environment.

(g) To accommodate reclamation that provides water supply development or water resource development not inconsistent with the applicable regional water supply plan approved pursuant to s. 373.709, provided adverse

impacts are not caused to the water resources in the basin. A variance may also be granted from the requirements of part IV of chapter 373, or the rules adopted thereunder, when a project provides an improvement in water availability in the basin and does not cause adverse impacts to water resources in the basin.

(2) Consideration of a variance pursuant to this section shall be based on the particular facts and circumstances surrounding each individual request.

(3) The department shall publish a notice of proposed agency action in the Florida Administrative Register and in a newspaper of general circulation in the area affected, and the department shall afford an opportunity for a hearing on each application for a variance, pursuant to the provisions of chapter 120. If no request for a hearing is filed with the department within 14 days of publication of the notice, the department may proceed to final agency action without a hearing.

(4) Variances issued pursuant to this section may be for the life of the facility or for such shorter period of time as may be appropriate. Variances issued for a period of 5 years or more shall be reviewed by the secretary at least every 5 years to ensure that the factors justifying the issuance of the variance have not changed so as to make the variance unnecessary.

(5) The department may prescribe appropriate conditions, including time limits, to the granting of a variance.

History.—s. 1, ch. 86-294; ss. 323, 508, ch. 94-356; s. 6, ch. 2003-423; s. 21, ch. 2010-205; s. 37, ch. 2013-14.

PART III

RESOURCE EXTRACTION RECLAMATION

- 378.401 Short title.
- 378.402 Legislative findings and intent.
- 378.403 Definitions.
- 378.404 Department of Environmental Protection; powers and duties.
- 378.405 Reclamation review procedure.
- 378.406 Confidentiality of records; availability of information.
- 378.407 Inspection.
- 378.408 Injunctive relief.
- 378.409 Civil liability.
- 378.411 Certification to receive notices of intent to mine, to review, and to inspect for compliance.
- 378.4115 County certification for limerock mining in the Miami-Dade County Lake Belt.
- 378.412 Relationship with other laws.
- 378.501 Limestone; notice of intent to mine required.
- 378.502 Existing mines.
- 378.503 Limestone reclamation performance standards.
- 378.601 Heavy minerals.
- 378.701 Fuller's earth clay; notice of intent to mine required.
- 378.702 Existing mines.
- 378.703 Fuller's earth clay reclamation performance standards.
- 378.801 Other resources; notice of intent to mine required.
- 378.802 Existing mines.
- 378.803 Other resources reclamation performance standards.
- 378.804 Exemption.
- 378.901 Life-of-the-mine permit.

378.401 Short title.— This part may be cited as the “Resource Extraction Reclamation Act.”

History.—s. 1, ch. 86-294.

378.402 Legislative findings and intent.—